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2 **CIVIL DIVISION**  
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Attorneys for Defendant Clark County  
7 District Attorney

8 UNITED STATES DISTRICT COURT  
9 DISTRICT OF NEVADA

10 ZACHARY KRISTON, AMERICAN )  
ROYALTY CRUSADE, KINGS COURT )  
11 COMMAND, LLC, KINGS COURT )  
COMMAND CORPORATION, )

12 Plaintiffs,

13 vs.

14 UNITED STATES OF AMERICA, U.S. )  
DEPARTMENT OF JUSTICE, U.S. )  
15 DISTRICT COURT OF NEVADA, )  
GEORGE FOLEY, JAMES MAHAN, )  
16 STATE OF COLORADO, MOFFAT )  
COUNTY DISTRICT ATTORNEY, )  
17 TONY PEROULIS, HARRY PEROULIS, )  
DEL TURNER, FIRST NATIONAL )  
18 BANK OF THE ROCKIES, STATE OF )  
NEVADA, DIVISION OF PAROLE )  
19 AND PROBATION, TERRA WEST )  
REALTY, CHRISTINE ROBINSON, )  
20 CHARLENE PROTO, BERNIE )  
CHIPPOLETTI, FLAMINGO )  
21 COURTYARD, LLC, JUSTICE COURT, )  
LAS VEGAS TOWNSHIP, ANN )  
22 ZIMMERMAN, VENETIAN HOTEL )  
OPERATIONS, LLC, LAS VEGAS )  
23 METROPOLITAN POLICE )  
DEPARTMENT, OFFICER )  
24 ROSENTHAL, OFFICER R. )  
ANDERSON, OFFICER W. RADER, )  
25 OFFICER MIDEBRANDT, OFFICER C. )  
OBRIEN, HUTCHISON & STEFFEN, )  
26 LLC, E. ROBERT SPEAR, MARK )  
CONNOT, MARK HUTCHISON, )  
27 HARRAH'S ENTERTAINMENT INC, )  
CLARK COUNTY DISTRICT )  
28 ATTORNEY, EIGHTH JUDICIAL )

Case No: 2:09-CV-00708-RJC-LRL

**DEFENDANT CLARK COUNTY  
DISTRICT ATTORNEY'S MOTION  
TO DISMISS**

1 DISTRICT COURT, VALERIE ADAIR, )  
MICHAEL ACCARDI, SANDRA )  
2 RATANA, BELL TRANS, BRENT )  
PERCIVAL, DARYLL ROSENBLATT, )  
3  
4 Defendants. )

5 **DEFENDANT CLARK COUNTY DISTRICT ATTORNEY'S MOTION TO DISMISS**

6 COMES NOW Defendant, CLARK COUNTY DISTRICT ATTORNEY, through its  
7 attorney, DAVID ROGER, District Attorney, by LUCINDA L. COUMOU, Deputy District  
8 Attorney, and respectfully moves this Honorable Court for an Order granting this Motion to  
9 Dismiss.

10 This Motion to Dismiss is based upon the attached Points and Authorities and all  
11 other matters on file herein.

12 DATED this 30<sup>th</sup> day of August, 2009.

13 DAVID ROGER  
DISTRICT ATTORNEY

14  
15 By: 

16 LUCINDA L. COUMOU  
Deputy District Attorney  
17 State Bar No. 005348  
500 S. Grand Central Pkwy.  
18 P. O. Box 552215  
Las Vegas, NV 89155-2215  
Attorney for Defendant  
19 **CLARK COUNTY DISTRICT**  
20 **ATTORNEY**

21 **POINTS AND AUTHORITIES**

22 **I.**

23 **STATEMENT OF DEFENDANT'S POSITION**

24 Plaintiff's claims for violation of his civil rights by this moving Defendant, pursuant  
25 to 42 U.S.C. §1983, fail because:

- 26 1) The Plaintiff's Complaint fails to state a claim for relief against the Clark  
27 County District Attorney because prosecutors are entitled to absolute  
28 prosecutorial immunity.

- 1           2)     The Clark County District Attorney cannot be liable for conspiracy because the  
2                 Plaintiff has dismissed the alleged co-conspirators.
- 3           3)     The Plaintiff's Complaint fails to plead sufficient facts to state a claim for  
4                 violation of RICO.

## II.

### STATEMENT OF FACTS

5           The Plaintiff pled guilty to the crime of Unlawful Possession of an Electronic Stun  
6           Device, in violation of Nevada Revised Statute 202, and on May 1, 2007, he was sentenced  
7           to a minimum of twelve (12) months and a maximum of forty-two (42) months in the  
8           Nevada Department of Prisons. The Plaintiff now files this "Multi-District Class Action  
9           Complaint" (hereinafter referred to as "Complaint") against numerous Defendants. Since the  
10          filing of the Complaint, the Plaintiff has also filed a Notice of Voluntary Dismissal of  
11          Certain Defendants (Docket 9).

12          Defendant Clark County District Attorney is specifically named in three counts of the  
13          Plaintiff's Complaint: Count XVIII, alleging Conspiracy to Violate RICO along with  
14          Defendants Justice Court, Las Vegas Township, and Ann Zimmerman; Count XVIII (a  
15          duplicate number), alleging Conspiracy to Violate RICO along with Defendants Eighth  
16          Judicial District Court and Valerie Adair; and, Count XXVI, alleging Conspiracy to Violate  
17          RICO along with Eighth Judicial District Court and Valerie Adair. All of the above-named  
18          Defendants with whom the Clark County District Attorney's Office is alleged to have  
19          conspired to violate RICO, have been voluntarily dismissed from this case.

20          Throughout the Plaintiff's factual allegations in his Complaint, he references that the  
21          Clark County District Attorney engaged in various acts such as coercion, extortion,  
22          oppression, malicious prosecution, obstruction of justice, involuntary servitude, intentional  
23          infliction of emotional distress, interference with prospective business relations, breach of  
24          contract and deprivation of the intangible right to honest services of public officials.

25          //

26          //

27          //

28          //

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## III.

ARGUMENTA. THE PLAINTIFF'S COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF AGAINST THE CLARK COUNTY DISTRICT ATTORNEY BECAUSE PROSECUTORS ARE ENTITLED TO ABSOLUTE PROSECUTORIAL IMMUNITY.

The leading case on the scope of prosecutorial immunity is *Imbler v. Pachtman*, 424 U.S. 409, 96 S.Ct. 984 (1976), wherein the United States Supreme Court ruled that a prosecutor is absolutely immune from §1983 damages for his quasi-judicial activity. *Id.* at 430-431, 96 S.Ct. at 996. The Court explained that:

A prosecutor is duty bound to exercise his best judgment both in deciding which suits to bring and in conducting them in court. The public trust of the prosecutor's office would suffer if he were constrained in making every decision by the consequences in terms of his own potential liability in a suit for damages. Such suits could be expected with some frequency, for a defendant often will transform his resentment at being prosecuted into the ascription of improper and malicious actions to the State's advocate.

*Id.* at 424-25, 96 S.Ct. at 992; cf. *Bradley v. Fisher*, 13 Wall., at 348, 20 L.Ed. 646; *Pierson v. Ray*, 386 U.S., at 554, 87 S.Ct., at 1217.

In an attempt to delineate the boundaries of its holding, the Court further stated that it agreed with the Court of Appeals' analysis of whether the prosecutor's "activities were intimately associated with the judicial phase of the criminal process" and thus were functions that fully deserved absolute immunity. The Court stated simply that "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a civil suit for damages under §1983." *Id.* at 430-31, 96 S.Ct. at 995.

In determining that prosecutors should enjoy absolute immunity, the *Imbler* court acknowledged that:

To be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty. But the alternative of qualifying a prosecutor's immunity would disserve the broader public interest. It would prevent the vigorous and fearless performance of the prosecutor's duty that is essential to the proper functioning of the criminal justice system.  
*Id.* at 427-28, 96 S.Ct. at 993-94.

1 In this case, the Plaintiff alleges that the Clark County District Attorney engaged in  
2 various acts such as coercion, extortion, oppression, malicious prosecution, obstruction of  
3 justice, involuntary servitude, intentional infliction of emotional distress, interference with  
4 prospective business relations, breach of contract and deprivation of the intangible right to  
5 honest services of public officials - presumably all in conjunction with his criminal  
6 prosecution. Assuming for purposes of this Motion to Dismiss that the Plaintiff's allegations  
7 are true, it does not change the fact that the Clark County District Attorney, as a prosecutor,  
8 is still entitled to absolute prosecutorial immunity. It is important to remember that absolute  
9 prosecutorial immunity is not defeated by a showing that the prosecutor acted wrongfully or  
10 even maliciously, or because the criminal defendant ultimately prevailed on appeal or in a  
11 habeas corpus proceeding. *Imbler*, at 428 & n.27, 96 S.Ct. at 994. The Clark County  
12 District Attorney is absolutely immune for the actions that his office took in prosecuting the  
13 Plaintiff's underlying criminal case.

14 **B. THE CLARK COUNTY DISTRICT ATTORNEY CANNOT BE LIABLE FOR**  
15 **CONSPIRACY BECAUSE THE PLAINTIFF HAS DISMISSED THE**  
16 **ALLEGED CO-CONSPIRATORS.**

17 Defendant Clark County District Attorney is specifically named in three counts of the  
18 Plaintiff's Complaint: Count XVIII, alleging Conspiracy to Violate RICO along with  
19 Defendants Justice Court, Las Vegas Township, and Ann Zimmerman; Count XVIII (a  
20 duplicate number), alleging Conspiracy to Violate RICO along with Defendants Eighth  
21 Judicial District Court and Valerie Adair; and, Count XXVI, alleging Conspiracy to Violate  
22 RICO along with Eighth Judicial District Court and Valerie Adair. All of the above-named  
23 Defendants with whom the Clark County District Attorney's Office is alleged to have  
24 conspired to violate RICO, have been voluntarily dismissed from this case.

25 A conspiracy, by definition, requires two or more persons. The Clark County District  
26 Attorney is the only remaining Defendant in the three causes of action against him.  
27 Therefore, the Clark County District Attorney should the Complaint against the Clark  
28 County District Attorney should be dismissed.

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1 **C. THE PLAINTIFF'S COMPLAINT FAILS TO PLEAD SUFFICIENT FACTS**  
 2 **TO STATE A CLAIM FOR VIOLATION OF RICO**

3 Recently, the United States Supreme Court addressed the issue of whether a  
 4 complaint pled facts sufficient to state a claim for purposeful and unlawful discrimination in  
 5 *Ashcroft v. Iqbal*, 129 S.Ct. 1937, \_\_ U.S. \_\_, (2009). There a Muslim Pakistani pretrial  
 6 detainee brought an action against current and former government officials for actions they  
 7 took against him in connection with his confinement, which he believed were  
 8 unconstitutional. The Court ruled that Iqbal's complaint failed to plead sufficient facts to  
 9 state a claim for purposeful and unlawful discrimination because purposeful discrimination  
 10 requires more than intent, it involves a decision maker's undertaking a course of action  
 11 "because of," not merely "in spite of," that action's adverse effects upon an identifiable  
 group." *Id.* at 1948-49, 1954.

12 The Court began its analysis by revisiting its decision in *Bell Atlantic Corp., v.*  
 13 *Twombly*, 550 U.S. 544, 127 S.Ct. 1955 (2007), which discussed the standard for evaluating  
 14 whether a complaint is sufficient to survive a motion to dismiss. The Court reiterated its  
 15 holding in *Twombly, supra*, that in light of Federal Rule of Civil Procedure 8(a)(2), "the  
 16 pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it  
 17 demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Iqbal*,  
 18 at 1949, \_\_ U.S. at \_\_ (citing *Twombly, supra*, at 555, 127 S.Ct. 1955). The Court went on  
 19 to note that "[a] pleading that offers 'labels and conclusions' or 'a formulaic recitation of  
 20 the elements of a cause of action will not do.'" *Iqbal* at 1949, \_\_ U.S. at \_\_ (citing *Twombly*  
 21 at 555, 127 S.Ct. 1955). "Nor does a complaint suffice if it tenders 'naked assertion[s]'  
 22 devoid of 'further factual enhancement.'" *Iqbal* at 1949, \_\_ U.S. at \_\_ (citing *Twombly* at  
 557, 127 S.Ct. 1955).

23 The Court then explained that there are two working principles underlying its  
 24 decision in *Twombly, supra*. First, the tenet that the court must accept as true all of the  
 25 allegations contained in a complaint does not apply to legal conclusions. Although for  
 26 purposes of a motion to dismiss, a court must take all of the factual allegations as true, it  
 27 does not have to accept as true a legal conclusion couched as a factual allegation. Mere  
 28



1 recitals of the elements of a cause of action supported by only conclusory statements will  
2 not suffice. *Iqbal*, at 1949-50 (citing *Twombly*, *supra*).

3 The second principle underlying the Court's decision in *Twombly*, *supra*, is that a  
4 complaint must state a plausible claim for relief. An inquiry into plausibility will be a  
5 "context-specific task," requiring a court to draw on its judicial experience and common  
6 sense. *Iqbal*, at 1950, \_\_\_ U.S. at \_\_\_. The Court concluded this point by stating that:

7 [W]here the well-pleaded facts do not permit the court to infer more  
8 than the mere possibility of misconduct, the complaint has alleged –  
9 but is has not 'show[n]' – that 'the pleader is entitled to relief.

10 *Iqbal*, at 1950, \_\_\_ U.S. at \_\_\_.

11 In this case, the Plaintiff specifically names the Clark County District Attorney in  
12 three counts of the his Complaint: Count XVIII, alleging Conspiracy to Violate RICO along  
13 with Defendants Justice Court, Las Vegas Township, and Ann Zimmerman; Count XVIII (a  
14 duplicate number), alleging Conspiracy to Violate RICO along with Defendants Eighth  
15 Judicial District Court and Valerie Adair; and, Count XXVI, alleging Conspiracy to Violate  
16 RICO along with Eighth Judicial District Court and Valerie Adair. All of the above-named  
17 Defendants with whom the Clark County District Attorney's Office is alleged to have  
18 conspired to violate RICO, have been voluntarily dismissed from this case.

19 Throughout the Plaintiff's factual allegations in his Complaint, he references that the  
20 Clark County District Attorney engaged in various acts such as coercion, extortion,  
21 oppression, malicious prosecution, obstruction of justice, involuntary servitude, intentional  
22 infliction of emotional distress, interference with prospective business relations, breach of  
23 contract and deprivation of the intangible right to honest services of public officials. Even if  
24 the counts against the Clark County District Attorney remain, despite the dismissal of the  
25 Defendants with whom he allegedly conspired to violate RICO, the Complaint must fail  
26 because nowhere does the Plaintiff give facts supporting his allegation of a conspiracy, nor  
27 of a violation of RICO. Regarding the Clark County District Attorney, the Plaintiff alleges  
28 only that he was prosecuted for a crime. He does not provide any details about how the  
Clark County District Attorney coerced, extorted, oppressed or obstructed justice in his  
prosecution, other than to recite the procedural history of his criminal case.

1 The factual allegations in Plaintiff's Complaint regarding the Clark County District  
2 Attorney, if taken as true, are simply that he was prosecuted. The allegations of conspiracy  
3 and violation of RICO, are really just legal conclusions masquerading as factual ones. Mere  
4 recitals of the elements of a cause of action supported only by conclusory statements will not  
5 withstand a motion to dismiss. *Iqbal, supra*. Additionally, a court can not simply infer more  
6 than the mere possibility of misconduct. The Complaint must "show" that the pleader is  
7 entitled to relief. *Iqbal, supra*. Therefore, the Plaintiff has not plead facts sufficient to show  
8 that the Clark County District Attorney conspired to violate RICO.

9 IV.

10 **CONCLUSION**

11 Based upon the foregoing, Defendant Clark County District Attorney respectfully  
12 requests that this Honorable Court grant his Motion to Dismiss the Plaintiff's Complaint on  
13 file herein.

14 DATED this 30<sup>th</sup> day of August, 2009.

15 DAVID ROGER  
16 DISTRICT ATTORNEY

17 By: 

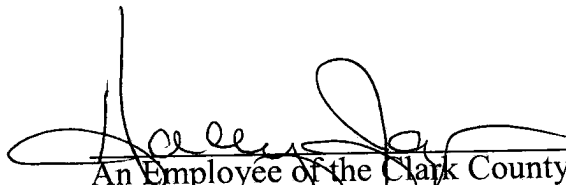
18 LUCINDA L. COUMOU  
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23 Las Vegas, NV 89155-2215  
24 Attorney for Defendant  
25 **CLARK COUNTY DISTRICT**  
26 **ATTORNEY**  
27  
28



**CERTIFICATE OF SERVICE BY U.S. MAIL**

I hereby certify that on the 31<sup>st</sup> day of August, 2009, a true and correct copy of the foregoing **DEFENDANT CLARK COUNTY DISTRICT ATTORNEY'S MOTION TO DISMISS**, was deposited in the United States Mail, postage prepaid, at Las Vegas, Nevada, enclosed in a sealed envelope, to the parties addressed as follows:

ZACHARY KRISTON  
4955 Lindell Road, #A-101  
Las Vegas, Nevada, 89118  
**Plaintiff in pro per**

  
An Employee of the Clark County District  
Attorney's Office – Civil Division